

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TIM P. BRUNDLE, on behalf of	.	Civil Action No. 1:15cv1494
the Constellis Employee Stock	.	
Ownership Plan,	.	
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	October 13, 2017
WILMINGTON TRUST, N.A., as	.	9:57 a.m.
successor to Wilmington Trust	.	
Retirement and Institutional	.	
Services Company,	.	
	.	
Defendant.	.	
	.	
.	.	
.	.	
.	.	
.	.	
.	.	
.	.	
.	.	

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	GREGORY Y. PORTER, ESQ. RYAN T. JENNY, ESQ. Bailey & Glasser LLP 1054 31st Street, N.W., Suite 230 Washington, D.C. 20007
FOR THE DEFENDANT:	STEPHEN W. ROBINSON, ESQ. McGuireWoods LLP 1750 Tysons Boulevard, Suite 1800 McLean, VA 22102-4215
FOR CONSTELLIS GROUP, INC.:	EDWARD L. ISLER, ESQ. Isler Dare P.C. 1945 Old Gallows Road, Suite 650 Vienna, VA 22182

ALSO PRESENT: TIM P. BRUNDLE

(Pages 1 - 7)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 OFFICIAL COURT REPORTER: ANNELIESE J. THOMSON, RDR, CRR
2 U.S. District Court, Fifth Floor
3 401 Courthouse Square
4 Alexandria, VA 22314
5 (703)299-8595
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S

2 THE COURT: Are all the attorneys here on Brundle?

3 MR. ROBINSON: Yes, Your Honor.

4 THE CLERK: Civil Action 15-1494, Tim P. Brundle v.
5 Wilmington Trust, N.A. Would counsel please note their
6 appearances for the record.

7 MR. PORTER: Good morning, Your Honor. Gregory
8 Porter for the plaintiff, Mr. Brundle. I have my colleague,
9 Ryan Jenny, with me as well, and Mr. Brundle.

10 THE COURT: Good morning.

11 MR. ROBINSON: Good morning, Your Honor. Steve
12 Robinson on behalf of Wilmington Trust.

13 THE COURT: Good morning.

14 MR. ROBINSON: Mr. Isler is in the courtroom as well.

15 THE COURT: And, Mr. Dare, you're here for --

16 MR. ROBINSON: Mr. Isler is for Constellis.

17 THE COURT: Yes, Mr. Isler.

18 MR. ISLER: My partner, Your Honor. Yes, I am here
19 for Constellis.

20 THE COURT: You're interchangeable, all right. Do
21 you want to be at counsel table, Mr. Isler?

22 MR. ISLER: I --

23 THE COURT: I've read your -- I mean, you've filed a
24 brief in this, although this is going to go quickly.

25 MR. ROBINSON: It would be nice if he was.

1 Otherwise, I'm outnumbered, Your Honor.

2 THE COURT: That's fine.

3 MR. ISLER: Do I have to sit with Mr. Robinson?

4 THE COURT: We have extra tables if you don't want to
5 sit --

6 MR. PORTER: There's no such thing as guilt by
7 association here.

8 (Laughter.)

9 THE COURT: I received, if my count is correct, I
10 think we've received 58 letters. I will tell you in all the
11 years I've done, you know, class action-type matters, that's
12 the most answers I've ever had, most objections. Of those 58
13 that we received, and I could be off by one or two, 16 did
14 recognize the particular value that, Mr. Porter, you and your
15 law firm played in this case and recognized that some
16 additional compensation might be appropriate but not the full
17 third that you're requesting from the common fund -- under
18 common fund concept.

19 So I've had a chance to read your papers, I know what
20 the case law is in on this, but I've also taken into
21 consideration the fact that, as I said, at least 58 members of
22 this fund, this ERISA fund took the time to write to the Court.
23 It's obviously -- and this was a small class. How many did we
24 decide it consists of, about two or three hundred?

25 MR. PORTER: Oh, no, Your Honor, it's more than that.

1 There were approximately 1,800 notices sent.

2 THE COURT: All right. That's still a significant
3 portion in my experience. So anyway, I -- your original fee
4 petition was \$2,815,729.50 for attorneys' fees.

5 MR. PORTER: Do you mean the fee-shifting motion?

6 THE COURT: Yeah.

7 MR. PORTER: Yes, Your Honor.

8 THE COURT: The original request. And I ordered that
9 \$1,819,631.11 be paid by the defendant, which left
10 approximately \$1 million of the fees that you wanted not being
11 compensated, correct?

12 MR. PORTER: The fees we requested to be shifted,
13 yes, Your Honor.

14 THE COURT: Yes. Right, right.

15 And I understand the argument that these cases
16 involve a great deal of specialized expertise, these ERISA
17 cases are very complicated, and that there is a risk factor
18 because if a plaintiff's firm is unsuccessful, they can wind up
19 holding nothing, and all of the out-of-pocket expenses, etc.,
20 not being compensated, and that there is a public policy
21 interest in encouraging these cases because there is no other
22 way of having ERISA beneficiaries' pension funds adequately
23 being protected.

24 So there is a policy issue that goes in favor of, you
25 know, some kind of common fund award; however, as many of the

1 protestors do point out, they themselves were never consulted.
2 Some of them were apparently even unaware of this litigation,
3 and for the people who wrote, explaining that this is a
4 significant portion of their retirement planning and funding,
5 they were objecting to have a third of the recovery go to the
6 attorneys' fees, to which they had themselves not agreed.

7 I think there is merit to that argument, so I don't
8 need to hear argument. I mean, I've read your papers. What
9 I'm doing is I'm sort of splitting the difference; that is, I
10 recognize -- and I'm pleased that at least 16 of these people
11 did recognize the work that your firm did.

12 I'm going to award a partial common fund award, an
13 additional \$1.5 million. That covers dollar for dollar every
14 bit of time you-all invested in this case, and most law firms,
15 in my experience, in these high-value cases don't usually
16 recover 100 percent on the dollar.

17 I did think that some of the case was to some degree
18 more expensively litigated than perhaps was necessary. There
19 was one attorney very active in the case who I think was from
20 Kentucky, and there was a lot of expense in terms of travel,
21 etc., and, you know, that's a choice that people make as to how
22 they want to manage a case, but it increases the costs, but
23 this judgment would allow, I think, the firm to be 100
24 percent-plus fully compensated for all the work that it did,
25 and I think given the fact that this is an ERISA case, that's

1 an equitable and appropriate result.

2 So that's the Court's decision, all right?

3 MR. PORTER: May I be heard, Your Honor?

4 THE COURT: No, I've ruled. Thank you. I got you
5 out of here early so I didn't have to waste your time. Thank
6 you.

7 MR. ROBINSON: Thank you, Your Honor.

8 MR. ISLER: Thank you, Your Honor.

9 (Which were all the proceedings
10 had at this time.)

11

12 CERTIFICATE OF THE REPORTER

13 I certify that the foregoing is a correct transcript of
14 the record of proceedings in the above-entitled matter.

15

16

17

/s/

Anneliese J. Thomson

18

19

20

21

22

23

24

25